

PROCEEDINGS

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1 (In open court.)

2 (Defendant present in open court.)

3 COURTROOM DEPUTY: All rise, the United States
4 District Court for the Eastern District of New York is now
5 in session, the Honorable John Gleeson is now presiding.

6 (Honorable John Gleeson takes the bench.)

7 COURTROOM DEPUTY: Calling Criminal Cause for
8 Status Conference in Docket No. 11-CR-623, *United States of*
9 *America against Agron Hasbajrami.*

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10 THE COURT: Will counsel please state their
11 appearances for the record, please.

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12 MR. DuCHARME: For the United States, Seth
13 DuCharme, and I'm joined by Saritha Komatireddy and Danya
14 Atiyeh from the National Security Division. Good afternoon,
15 your Honor.

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16 MR. ZISSOU: Steve Zissou and Michael Bachrach for
17 Mr. Hasbajrami.

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18 THE COURT: Good afternoon. Please swear
19 interpreter in.

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20 (Interpreter was sworn in.)

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21 THE COURT: Okay. I put this on because I have
22 denied the motion to suppress and in the docket entry doing
23 so gave you some food for thought. I thought I'd touch base
24 with you on your thoughts about how we're going to proceed.

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25 We've obviously got a little bit of business left

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1 to transact in connection with the CIPA Section 4, and then
2 we have either a trial date or a disposition.

3 It's an unusually postured case. Obviously, the
4 defendant pled guilty and was sentenced, but the case was
5 exhumed as far as the proceedings by me were concerned. Now
6 we've gotten a resolution and I wonder what you think,
7 that's why I asked you. Maybe you can share that with me.

8 MR. ZISSOU: Well, Judge, I'm happy to go first.
9 Obviously as you know, it was our publicly-filed
10 recommendation that Mr. Hasbajrami not proceed with the
11 underlying motion. So it makes sense, obviously -- it's
12 obvious that our view is we would embrace your Honor's
13 suggestion. We think it's a fair one, to be sure, and I'd
14 certainly recommended it to him.

15 We have just commenced that discussion with him.
16 We met with him on Friday at length. Obviously, as you
17 know, it takes a little time to wrap your head around it
18 when you're in the position that he is in, so I know that he
19 still has some questions about it, but just as counsel, we
20 think that it was a reasonable and prudent one that the
21 Court suggested. We think it's fair, and our recommendation
22 is for him to accept it. And we would encourage the
23 government to make it available.

24 THE COURT: Yeah, I'm not a position to make that
25 course available. So why don't we hear from the people who

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1 are.

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2 MR. DuCHARME: Sure. Your Honor, in short, we
3 don't have a final position yet with respect to the -- what
4 a plea offer might be at this juncture in the case.

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5 Mr. Zissou and I have spoken about it conceptually,
6 certainly. The issue has been raised both in our office and
7 with the National Security Division.

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8 I think, you know, to the extent that we're going
9 to make another plea offer, I think we can make that
10 relatively soon, we have a decision maybe in the next couple
11 of weeks, to see whether or not it makes sense to proceed to
12 trial or not.

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13 Having been down this road before, I'm reluctant
14 to be optimistic about the fact that the case could be
15 resolved by plea, and so we are certainly preparing to
16 proceed to trial with that possible eventuality.

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17 But maybe it makes sense, Judge, to -- if you'd
18 like, either we can set a date by which we can communicate
19 to the Court whether a plea offer has been extended or we
20 can come back before you and give you an update or whatever
21 your preference.

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22 THE COURT: There is no need to schlep back in,
23 just let me know. In the meantime, I'm going to assume that
24 we're going forward. And what can you tell me in terms of
25 what can reasonably be expected. If you try this case, are

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1 there going to be any applications under Rule 15 for 03:51
2 example? 03:51

3 MR. DuCHARME: No. 03:51

4 MR. ZISSOU: I don't anticipate that either, 03:51
5 Judge. 03:51

6 THE COURT: All right. 03:51

7 MR. ZISSOU: There is -- we should share with you 03:51
8 -- I'm sorry, was your Honor finished? 03:51

9 THE COURT: No, go ahead. 03:51

10 MR. ZISSOU: There has been some recent classified 03:51
11 disclosure that is of a quality that I won't describe out of 03:52
12 the CIPA section, but that is of a quality materially 03:52
13 different than what we had prior to the last time we 03:52
14 litigated the case before your Honor, before the guilty 03:52
15 plea. That material is not in a format that either 03:52
16 Mr. Bachrach or I could understand, and will result in our 03:52
17 need for at least two additional cleared personnel who could 03:52
18 explain what's on it to us. 03:52

19 Frankly, we don't even -- we can't appreciate the 03:52
20 scope of it. One of the things we've done is asked one of 03:52
21 the attorneys for the government for them to consider 03:52
22 allowing us to discuss it with our client, because in the 03:52
23 absence of that, it would -- I think it would put a 03:53
24 difficult -- it would make it difficult for us, I should 03:53
25 say, to adequately prepare, so -- there are some new things 03:53

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1 going on. At the same time, I'm not unmindful of the fact 03:53
2 that the case has gotten whiskers on it, as your Honor 03:53
3 pointed out the last time. 03:53

4 We're not a position to say to you, here is what 03:53
5 we're going to produce. This is a lot of new material that 03:53
6 is directly related to the client, it's not far afield, it's 03:53
7 close. So we have a funding order before the Court that 03:53
8 your Honor is considering, we'll have to add to that. We've 03:53
9 invited Mr. Dratel who you know is present in court today, 03:53
10 he assisted on the submissions. We invited him to be 03:53
11 present in the event that your Honor was inclined to have a 03:53
12 shorter trial schedule or if you were going to set a trial 03:54
13 schedule for today. 03:54

14 Obviously, we can comply with whatever direction 03:54
15 your Honor sets. We would need the support, obviously. So 03:54
16 I guess what my suggestion is, rather than you fixing a 03:54
17 trial date, it might be better if your Honor fixed a further 03:54
18 status conference. Hopefully, by then. We've worked out 03:54
19 the discovery issues. And if not, we can bring it to your 03:54
20 Honor's attention for your own resolution. 03:54

21 THE COURT: When was the funding order filed or a 03:54
22 request for a funding order? 03:54

23 MR. BACHRACH: Approximately two weeks ago, your 03:54
24 Honor. I would have to double check. 03:54

25 MR. ZISSOU: It was actually a sealed file. 03:54

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1 THE COURT: It doesn't ring a bell with me. Have
2 you seen it?

3 LAW CLERK: I'm not sure.

4 THE COURT: I'm sure there are some judges for
5 whom what you just said is acceptable, but it's too opaque
6 for me. Is it a funding request?

7 MR. ZISSOU: Yes, funding interpreters and the
8 like, paralegal.

9 THE COURT: We'll find it and take a look at it.

10 MR. ZISSOU: Depending on what your Honor decides
11 today, we'll probably have to supplement it depending on,
12 again, the schedule your Honor so suggests.

13 My own preference would be, since I think your
14 Honor's suggestion was a fair one, and I think under all the
15 circumstances it's appropriate, we've made our reasons why
16 clear to the attorney for the government, it would seem to
17 me it would be prudent to allow the parties a sufficient
18 opportunity to resolve that, before you fix a trial date.
19 But again, as your Honor knows, we'll comply with whatever
20 directive we have.

21 THE COURT: Right. Okay. I think we are going to
22 we need to plan. How long is this trial going to take, if
23 you have to try it?

24 MR. DuCHARME: A week to two weeks from start to
25 finish, Judge.

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1 THE COURT: Yeah, I think we ought to pick a date 03:55
2 so we can all plan around it and have it sufficiently far 03:56
3 out so that we leave enough room to take care of what we've 03:56
4 got to take care of in the meantime. 03:56

5 Ilene, what are the jury return dates in the month 03:56
6 of July? 03:56

7 COURTROOM DEPUTY: July 13th and the 27th. 03:56

8 THE COURT: And prior to the 13th, in June? 03:56

9 COURTROOM DEPUTY: June 29th. 03:56

10 MR. ZISSOU: Does September catch your eye, Judge? 03:56

11 THE COURT: No, it doesn't. So let's -- why don't 03:56
12 we plan around June 29th. 03:56

13 MR. ZISSOU: I'm not sure I can accommodate that, 03:56
14 Judge. I have a trial that's -- could I just have a moment, 03:56
15 your Honor? 03:56

16 THE COURT: Sure. 03:56

17 (Pause.) 03:56

18 MR. ZISSOU: Oh, I'm sorry, Judge, I beg your 03:57
19 pardon. I had something with Judge Johnson and that was 03:57
20 rescheduled to September, so I'm glad that didn't adopt 03:57
21 September. July 27th would be -- 03:57

22 THE COURT: It would be two days earlier, I think 03:57
23 then. 03:57

24 MR. ZISSOU: We're talking about July? 03:57

25 THE COURT: No, I was talking about June, 03:57

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1 June 29th. 03:57

2 MR. ZISSOU: July 27th? 03:57

3 THE COURT: No. June. 03:58

4 MR. ZISSOU: No. I'm saying the other "J" month. 03:58

5 THE COURT: No, I'm going to be out the last week 03:58

6 of July, most of that week. So let's get the case tried. 03:58

7 It's been around forever, if it survives this potential 03:58

8 resolution and condition. Obviously, the impetus for that 03:58

9 suggestion is fair is fair, belated disclosure of the 03:58

10 Rule 702 or the Section 702 surveillance gave them a shot. 03:58

11 I'll get an opinion, it doesn't matter too much what I 03:58

12 write, sort of get it up to the Court of Appeals, it seems 03:58

13 to me. 03:58

14 MR. DuCHARME: Judge, with respect to the 03:58

15 June 29th trial date, if that is the trial, it likely won't 03:58

16 be me, but we have many able bodied prosecutors in our 03:58

17 office, so that should not be determinative. I wanted to 03:58

18 apprise the Court. 03:58

19 THE COURT: It's not, but I'm curious, what date 03:58

20 might be set that results in it being you? 03:59

21 MR. DuCHARME: Well, I think you said the other 03:59

22 return dates were July 13th and July 27th? 03:59

23 THE COURT: Yes. 03:59

24 MR. DuCHARME: The 13th or the 27th, it could be 03:59

25 me. 03:59

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1 THE COURT: Could we get the case in before the 03:59
2 end of the -- could we get the case in within two weeks? 03:59

3 MR. DuCHARME: Yes, your Honor. I think the 03:59
4 government's case will be five days at most. 03:59

5 THE COURT: You wanted it in July, right? 03:59

6 MR. ZISSOU: I did, Judge. I'm just thinking of 03:59
7 dates that pop into my head. Would your Honor -- could we 03:59
8 invite Mr. Rucker up here to get his input as to -- we're 03:59
9 going to need a Turkish-cleared interpreter and an 03:59
10 Albanian-cleared interpreter. 03:59

11 THE COURT: You can talk to him about that. If 03:59
12 you've got a problem, you can bring it to my attention. 03:59

13 MR. ZISSOU: Will do. 03:59

14 THE COURT: All right. Let's go July 13th. It 03:59
15 gives you half a loaf and it gets us Mr. DuCharme, it's a 03:59
16 win-win. 04:00

17 MR. ZISSOU: I would not want to proceed without 04:00
18 him. 04:00

19 MR. DuCHARME: Thanks, Judge. 04:00

20 THE COURT: What else? What's in my court? 04:00
21 Obviously I owe you an opinion, but you'll get that in due 04:00
22 course. What's in my court? 04:00

23 MR. DuCHARME: I think we're just resolving the 04:00
24 CIPA issues, your Honor. 04:00

25 THE COURT: How are we doing on that? 04:00

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1 MR. DuCHARME: We're making progress, your Honor, 04:00
2 that's all I can say publicly. 04:00

3 THE COURT: Can you give me a timeframe hint? 04:00

4 MS. KOMATIREDDY: We'll make the timeframe that 04:00
5 you suggested, your Honor. 04:00

6 THE COURT: Remind me what that was. 04:00

7 MR. DuCHARME: That was 30 days, right? 04:00

8 MS. KOMATIREDDY: March 12th. 04:00

9 THE COURT: Got it. Okay. What other motions? 04:00
10 There are some motions that have not been decided that are 04:00
11 just stuff out there, 3500. Is there anything you really 04:00
12 want to bring to my attention now? 04:00

13 MR. ZISSOU: Not at the moment, Judge, but we're 04:00
14 certainly going to go over the new material and if something 04:00
15 comes up, we'll certainly bring it to your Honor's 04:00
16 attention. 04:00

17 THE COURT: Okay. 04:01

18 MR. ZISSOU: Did you want to pick a status 04:01
19 conference for various reasons? 04:01

20 THE COURT: Yeah, I don't know, what did you think 04:01
21 makes sense? 04:01

22 MR. ZISSOU: I'm thinking probably a month, if 04:01
23 there are CIPA issues they are classified or clearance 04:01
24 issues, we'll have it resolved by then. 04:01

25 THE COURT: Okay. Ilene, and forgive me, I 04:01

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1 haven't seen this order, I'm sure it's hanging around 04:01

2 somewhere, if we can't find it, we'll call you. 04:01

3 COURTROOM DEPUTY: April 9th at 2:00. 04:01

4 THE COURT: All right? 04:01

5 MR. ZISSOU: That's fine, Judge. Thank you. 04:01

6 THE COURT: Has this case been declared complex? 04:01

7 MR. ZISSOU: Many times. 04:01

8 THE COURT: I'll declare it again a complex case 04:01

9 for speedy trial purposes. 04:01

10 MR. ZISSOU: I join in the request. 04:01

11 THE COURT: Does that bring us to the conclusion 04:01

12 of these proceedings? 04:01

13 MR. DuCHARME: I think it does, your Honor. 04:02

14 THE COURT: Always a pleasure to see you all. 04:02

15 (Proceedings adjourned at 4:02 p.m.) 04:02

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